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Human right to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, in accordance with Human Rights Council resolutions 16/2 and 21/2.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Summary

The Special Rapporteur submits the present report to the General Assembly in accordance with Human Rights Council resolutions 16/2 and 21/2. The report focuses on the right to participation in the context of realizing the right to safe drinking water and sanitation, emphasizing that States have an obligation to ensure participation. The importance of participation has long been recognized in the water and sanitation sector. Excellent examples of participatory processes exist; however, these are often isolated instances rather than institutionalized.

The Special Rapporteur seeks to provide guidance on what the right to participation requires, what elements are essential for ensuring active, free and meaningful participation, and what participation entails at various levels of decision-making. She acknowledges that participatory processes are challenging. Most significantly, when participatory processes do not address entrenched power structures and marginalization, they risk reinforcing and "legitimizing" inequalities. However, where participatory processes are meaningful and inclusive, the improvements in sustainability and empowerment are significant.

I. Introduction

1. The Special Rapporteur submits the present report to the General Assembly in accordance with Human Rights Council resolutions 16/2 and 21/2. The report examines the right to participation in the context of the human right to safe drinking water and sanitation. During the course of her mandate, she has witnessed the positive impact of authentic participation in ensuring more sustainable and inclusive results, as well as persisting problems stemming from the lack of meaningful participation.

2. There are many positive examples of participatory processes in the water and sanitation sector. However, these seem to be isolated instances rather than systematic approaches to ensuring participation at all levels. Participation is not a single event, but a continuous process. Institutionalizing genuine participation and embedding it in the political culture is challenging, but when done properly, as the Special Rapporteur on extreme poverty and human rights has noted, the gains in terms of strengthening public life and people's ability to make autonomous decisions and in being able to claim and enjoy their rights, as well as achieving sustainability, are clear (A/HRC/23/36, paras. 16-18).

3. The Special Rapporteur is concerned that "participation" is sometimes a façade. Where processes fail to pay attention to power relationships, including entrenched hierarchies, patriarchal structures and mechanisms of exclusion, they can perpetuate, or even reinforce, inequalities. An ostensibly "participatory" process may lend legitimacy to entrenched inequalities. It would be naïve to assume that participation per se is empowering; empowerment does not occur automatically, and the greatest challenge in realizing the right to participation may be to ensure that everyone can realize his or her right to participation on the basis of equality.

4. Participation is a human right. As such, it is an obligation that demands compliance. What is more, participation brings wide-ranging advantages in terms of empowerment and sustainability. It is essential for guaranteeing democracy, and it strengthens people's autonomy, agency and dignity.

5. A number of instruments provide detailed guidance on participation in particular areas or for certain population groups. However, guidance from a human rights perspective relating to all areas of decision-making on water and sanitation is still lacking. For example, what are the minimum standards for ensuring the right to participation? What does active, free and meaningful participation imply and how can it be implemented? How can participation be embedded systematically at all levels, for all population groups?

6. Much of the discourse around participation has taken place in the context of development cooperation, urging donors, non-governmental organizations (NGOs) and international organizations to adopt a human rights-based and participatory approach to their programming. While acknowledging that these actors play significant roles, the present report focuses on participation in national processes. National processes are of the utmost importance for the realization of the right to participation, and other actors should support States in developing these processes.

7. To inform her views on the issue, the Special Rapporteur convened a consultation of experts from different backgrounds, gathering both technical expertise and knowledge gained through experience. She also sent out a

questionnaire on participation in the realization of the right to water and sanitation and received more than 50 responses from States and other stakeholders.[1]

8. The present report outlines the legal basis of the right to participation. It then discusses a number of elements that need to be in place to make participation active, free and meaningful, and addresses difficulties in ensuring participation. It then discusses participation at different levels of decision-making and concludes with a number of recommendations.

II. Legal basis of the right to participation

9. The right to participation is enshrined in numerous human rights instruments. The Universal Declaration of Human Rights sets out in article 21 (a) that everyone has the right to take part in the government of their country. The Declaration on the Right to Development, which has come to significantly influence the understanding of participation, states in article 2 (3) that participation to be "active, free and meaningful".

10. Article 25 (a) of the International Covenant on Civil and Political Rights guarantees the right "to take part in the conduct of public affairs, directly or through freely chosen representatives". In interpreting this provision, the Human Rights Committee, in paragraph 5 of general comment No. 25 (1996), states that "the conduct of public affairs ... relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels".

11. Treaties adopted subsequent to the International Covenant expand the understanding of participation. Article 7 (b) and (c) of the Convention on the Elimination of All Forms of Discrimination against Women guarantees women's equal rights to "participate in the formulation of government policy and the implementation thereof" and to "participate in non-governmental organizations and associations concerned with the public and political life of the country". Article 14 (2) (a) specifies that women living in rural areas have the right to "participate in the elaboration and implementation of development planning at all levels".

12. Article 12 of the Convention on the Rights of the Child guarantees the child's right to be heard and to have his or her views taken into account. By requiring not only that children be given the opportunity to express their views in all matters affecting them but also that those views be given due weight, the Convention seeks to ensure that children's participation is meaningful.[2]

13. "Full and effective participation and inclusion in society" is one of the general principles of the Convention on the Rights of Persons with Disabilities (art. 3 (c)). Article 29 of the Convention, devoted to participation in political and public life, details measures that States shall take to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others".

[1] For more information, see: www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ContributionsParticipation.aspx.

[2] See Committee on the Rights of the Child, general comment No. 12 (2009), para. 28.

14. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization identifies participation as its cornerstone in articles 6 and 7. Article 6 (1) (b) states that Governments shall "establish means by which these [indigenous] peoples can freely participate, to at least the same extent as other sectors of the population", in applying the provisions of the Convention. The United Nations Declaration on the Rights of Indigenous Peoples provides for a more far-reaching standard, requiring "free, prior and informed consent" on various matters that are the subject of the Declaration.

15. In Europe, article 5 (i) of the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) of the Economic Commission for Europe (EEC) identifies "access to information and public participation in decision-making concerning water and health" as a principle, and articles (5) (b) and 6 (2) require public participation in target-setting and developing water-management plans. Moreover, the ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) guarantees the right to participate in decisions on specific activities, in the establishment of plans, programmes and policies and in the development of laws (arts. 6-8). Efforts are under way to develop a similar instrument under the auspices of the Economic Commission for Latin America and the Caribbean.[3] The Special Rapporteur welcomes these developments.

16. Other regional instruments include the African Charter on Human and Peoples' Rights (art. 13 (1)), the American Convention on Human Rights (art. 23 (1) (a)), the Inter-American Democratic Charter (art. 2) and the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the right to free elections (art. 3). Article 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides for equal participation of women in the political and decision-making process. Furthermore, the right to participation is enshrined in many national legal systems.

17. The right to participation is firmly grounded in human rights law. Starting from rather general provisions on participation in the conduct of public affairs, recent developments spell out the requirements in more detail. Instruments on child rights, the rights of persons with disabilities and indigenous rights respond to particular challenges faced by certain groups. They also mark a trend towards a broader and more robust understanding of participation that demands inclusive, active, free and meaningful participation in all areas at all stages.

III. Elements of active, free and meaningful participation

18. Active, free and meaningful participation rules out token forms of participation, the mere sharing of information or superficial consultation. This section identifies essential elements of active, free and meaningful participation in order to clarify what participation means in human rights terms.

[3] See www.eclac.cl/rio20/principio10/default.asp?idioma=IN.

A. Involving people in setting out the terms of engagement

19. Participants must be involved in determining the terms of participation, the scope of issues and the questions to be addressed, their framing and sequencing, and rules of procedure. The power to take part in setting the terms of the engagement plays a big role in shaping the conversation. Having no say over the design of the very process of engagement can result in some issues being tacitly decided beforehand and excluded from the participatory space altogether. The choice of mode of engagement determines whether people will be willing and able to participate. Efforts should be made, for instance, to involve residents in deciding venues, meeting times, and what balance of electronic and face-to-face interaction should be struck.

B. Creating space for participation

20. In some instances, empowered participatory governance has been successful, i.e., people have effectively mobilized to influence policy-making. For example, communities in California successfully mobilized, leading to the adoption of Assembly Bill 685, the California Human Right to Water Bill. Communities in California's Central Valley formed a coalition of NGOs, the Safe Water Alliance, and successfully engaged legislators to act on their behalf.[4] In the Rupnagar slum in Bangladesh, a girls' club encourages neighbours to follow safe menstrual hygiene practices. The club members produce sanitary napkins and go door to door to promote hygienic behaviour (see A/HRC/15/55 and Corr.1, para. 69); they also negotiated for and obtained a legal water connection.

21. States must provide the opportunity to engage and develop such initiatives. However, States must not justify inaction by placing the entire burden on the people taking the initiative. States have an obligation to invite participation and to create opportunities from the beginning of deliberations on a particular measure and before any decisions, even de facto decisions, have been taken; once preliminary decisions are taken, or promises made, it becomes much more difficult to agree on outcomes. Spaces for participation should be both formal (for instance, referendums or public inquiries) and informal.

C. Enabling people to access participatory processes

22. States not only have to create or promote spaces for participation, but also must enable people to eliminate barriers to accessing deliberative processes. People must have information on how to access these spaces and the procedures for getting involved. One expert has interpreted article 12 of the Convention on the Rights of the Child to require "space" and "voice", i.e., the child must have the opportunity to express his/her views with adequate facilitation.[5] The Committee on the Rights of

[4] International Human Rights Law Clinic, *The Human Right to Water Bill in California: An Implementation Framework for State Agencies* (Berkeley, University of California School of Law, May 2013). Available from www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf.

[5] Laura Lundy, "'Voice' is not enough: conceptualizing article 12 of the United Nations Convention on the Right of the Child", *British Educational Research Journal*, vol. 33, No. 6 (December 2007), p. 933.

the Child points out that "[t]hose responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child.... The decision maker must adequately prepare the child before the hearing, ... and has to take account of the views of the child in this regard".[6] Article 29 of the Convention on the Rights of Persons with Disabilities requires States parties to ensure that persons with disabilities can effectively and fully participate in public life and actively promote an adequate environment for that purpose.

23. The most persistent barrier to participation may lie in surmounting a culture of low expectations and cynicism, beliefs harboured both by individuals and public officials. States should revise the incentive structures for public officials so that they are rewarded for facilitating genuine participation rather than regarding it merely as an item to be mechanically ticked off on a checklist. This may require training on facilitation and inter-personal skills.

24. Enabling participation can take many forms. For example, in supporting village-level autonomy in development planning in the late 1990s, the State of Kerala in India offered seminars to teach the basics of conducting assessments and formulating development plans.[7] Other barriers may relate to language, literacy, meeting times, venue, advance registration and physical access. Sufficient time needs to be allowed for the participatory process. If deadlines for the receipt of public input are too tight, some interested actors may be shut out. The Aarhus Convention requires timely and effective notification of the concerned public as well as reasonable time frames for participation (art. 6 (2)).

D. Guaranteeing free and safe participation

25. Free participation rules out any form of coercion or inducement, direct or indirect. Participation must be free from manipulation or intimidation. There must be no conditions attached, such as tying access to water and sanitation to attendance of a public hearing. Participation must not be secured through bribery or the promise of a reward.[8]

26. Participation must be safe. People must not be or feel threatened when attending meetings or otherwise participating. They must be able to voice their concerns freely or request information without fear of reprisals or discrimination. Some individuals, including sex workers, undocumented migrants, survivors of human trafficking or rejected asylum seekers, face particular barriers and fear exposing themselves when taking part in official processes. Similarly, sanitation workers in many countries may not want to be identified because of stigma attached to their job. States must take specific measures to enable people to take part without fear of exposure, e.g., by allowing for anonymous participation.

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[6] Committee on the Rights of the Child, general comment No. 12 (2009), para. 41.

[7] Archon Fung and Erik Olin Wright, "Deepening democracy: innovations in empowered participatory governance", *Politics and Society*, vol. 29, No. 1 (March 2001), Political Sociology, p. 16.

[8] Guidelines on Free, Prior and Informed Consent (Geneva, UN-REDD Programme (United Nations collaborative initiative on Reducing Emissions from Deforestation and Degradation), 2013), p. 18 (hereafter UN-REDD Guidelines). Available from www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53.

E. Ensuring access to information

27. Participation must be informed. People require accessible information on the issues at stake that enables them to form an opinion. Access to information must be "full and equal", not favouring some and excluding others.[9] To ensure equal access, information must be made available and be clear and consistent. It must be presented in different formats and in appropriate language. This requires communicating through various channels and media such as radio, photographs and oral presentations; simply posting information online does not make it accessible to everyone. For people to be able to understand and verify the information presented, it must be provided well in advance of any opportunity to provide input.[10] Cost must not be a barrier to accessing information. The Aarhus Convention explicitly requires that people may inspect information relevant for decision-making at no cost (art. 6 (6)).

28. Information must be objective, i.e., cover the potential positive and negative impacts of the measures being considered, as well as comprehensive, i.e., not leave out significant elements.[11]

29. Access to information must be guided by the principle of maximum disclosure. Exceptions should be narrow and must relate to a legitimate aim.[12] Public bodies should proactively publish information rather than merely react to crises or complaints. Requests for information should be processed rapidly and fairly. The State must ensure that the right to participation is not undermined by claiming commercial confidentiality, which must be limited to legitimate interests. Meetings by public bodies should generally be open to the public.[13]

F. Providing reasonable opportunity to influence decision-making

30. Meaningful participation entails ensuring that people's views are considered and influence the decision. Often, consultations are oriented towards securing people's consent rather than involving them in the design of measures. If people are allowed "voice without influence",[14] i.e., they are involved in processes that have no impact on policy-making, the potential for frustration is enormous. The Aarhus Convention requires that public bodies take due account of the outcome of public participation and notify the public of the decision made, along with reasons and considerations on which the decision is based (art. 6 (8) and (9)). In relation to child rights, it is required that children have an "audience" and "influence", i.e., that their

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[9] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2003) on the right to water, para. 48.

[10] Aarhus Convention, art. 6 (2); UN-REDD Guidelines, p. 19.

[11] UN-REDD Guidelines, p. 19.

[12] Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, International Standards Series (London, 1999), p. 5. Available from www.article19.org/data/files/pdfs/standards/righttoknow.pdf.

[13] See Article 19, *The Free Flow Principles: Freedom of Expression and the Rights to Water and Sanitation*, International Standards Series (London, 2014), p. 9.

[14] John Gaventa, "Introduction: exploring citizenship, participation and accountability", *IDS Bulletin*, vol. 33, No. 2 (2002), p. 1.

views be listened to and acted upon as appropriate.[15] The child must be informed of the outcome and how her or his views were considered.[16]

31. The process that preceded the adoption by Brazil of its national plan for water and sanitation is an illustration of good practice: the Government made publicly available a record of all the contributions received, indicating that over two thirds of the suggestions had been incorporated into the plan and giving reasons why the remaining ones were not included (A/HRC/27/55/Add.1, para. 93). Similarly, authorities in Tuscany, Italy, are required to answer proposals made regarding policies and explain why they are adopted or rejected.[17]

IV. Difficulties in ensuring participation

32. Ensuring participation poses a number of difficulties. The greatest efforts may be needed to ensure that all those concerned have the opportunity to influence decision-making and that existing power structures are addressed. But other challenges exist as well.

A. Complementing representative democracy with direct participation

33. Some argue that direct participation is unnecessary where structures for representative democracy exist. Decisions by elected representatives would already be regarded as legitimate, given the mandate conferred by the electorate. However, article 25 of the International Covenant on Civil and Political Rights provides both for the right to vote and the right to participate in public affairs. Periodic elections are a blunt instrument for achieving public participation, let alone for ensuring inclusion.[18] The realization of human rights is a dynamic process, and elections alone are not enough. Participatory processes complement representative democratic structures and allow for more direct influence by the public.

B. Continuous State support and oversight in the context of community management

34. The terms "user participation" and "community ownership" have been used in connection with the water and sanitation sector for decades. However, participation was thought of merely in terms of how it would affect project costs and outcomes. In practice, delegation to communities was seen to imply a sufficient degree of participation so that, by delegating, State authorities could withdraw and not exercise their obligations. While communities can play a role in service provision, States retain the obligation to ensure that services are adequate by providing support, regulation and oversight. Where services are decentralized, States must ensure that communities have adequate resources to fulfil their responsibilities.

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[15] Lundy, p. 933.

[16] Committee on the Rights of the Child, general comment No. 12 (2009), para. 45.

[17] Region of Tuscany Law No. 69/2007, *Norme sulla promozione della partecipazione alla elaborazione delle politiche regionali e locali*, art. 10.

[18] Fung and Wright, p. 5.

C. Balancing technical expertise and knowledge gained through experience

35. Some decisions require technical expertise. However, that is often used as a pretext for excluding people from participating in decision-making on issues presented as being "too complicated" for lay people to understand. Many decisions viewed as purely technical are in fact value choices, and the public must participate in making them. Experts still have a role to play, but that role is ideally one of facilitator, helping to synthesize and communicate expert knowledge and enabling people to take informed decisions.

36. Negative examples abound of the failure to achieve the appropriate balance between technical expertise and knowledge gained through experience. For example, there have been cases where providing communities with latrines using subsidies and a standard model design was expected to solve the rural sanitation problem. However, it emerged that the latrines were often not used, or were used as storage facilities or to house livestock. On the other hand, where modifications to water and sanitation facilities are needed to ensure accessibility by disabled persons, specialist knowledge plays a useful role by informing the process of analysing the strengths and weaknesses of each option so that people can make an informed choice in light of their particular needs.[19] Testimony can be extremely powerful and effective for bringing people's experiences to bear. "Poverty truth commissions" can lead to a useful inversion of power dynamics, with those who have become experts through experience testifying and those "in power" hearing the testimony.[20] The process ensures that people experiencing poverty are at the heart of developing solutions.

D. Factoring in the costs of participatory processes

37. Participatory processes cost money and take time. In addition to costs for the State and service providers, the time and opportunity costs for the people participating must not be overlooked. This is not an argument against encouraging participation, but it should serve as a reminder of the dilemmas involved. In order to justify the costs and avoid frustration, participation must be meaningful and actually influence decision-making.

38. From the perspective of Governments and service providers, the cost of undoing or redoing a project because of people's objections can be higher than the costs of participatory processes. The wastefulness of facilities that end up not being utilized demonstrates that investing in participatory processes is cost-effective. The cost of participation should be factored in from the beginning, not viewed as an external expense. In the *Olivia Road* case heard by the Constitutional Court of South Africa, the municipal government argued that given the large number of people in need it would be impractical and costly to expect meaningful engagement. The Court disagreed, stating that the city of Johannesburg should have taken the

[19] See examples in Hazel Jones and Bob Reed, *Water and Sanitation for Disabled People and Other Vulnerable Groups: Designing Services to Improve Accessibility* (Longborough, United Kingdom, Water, Engineering and Development Centre (WEDC), 2005).

[20] See, for example, in Scotland: www.faithincommunityscotland.org/poverty-truth-commission.

consequences of its policies into account when it drew up its strategy.[21] A joint programme by the United Nations Development Programme and the United Nations Children's Fund (UNICEF) on institutional development and water infrastructure in Bosnia and Herzegovina allocated a significant share of the budget to strengthening the inclusion of residents in participatory municipal water governance.[22]

E. Balancing competing interests

39. Ensuring participation and gathering everyone's views inevitably brings diverse and competing interests to the fore. For instance, the interests of property owners and occupiers might clash. Utility workers or small-scale service providers have interests that differ from those of water users. The framework for balancing competing interests is human rights and the law. Many tensions will be resolved by applying the legislative framework, as doing so would automatically rule out illegitimate interests.

40. The challenge is to balance a diversity of legitimate interests and to find solutions that, while perhaps not taking all competing views fully on board, are acceptable to everyone. The key actions in this regard are interaction, bringing all views to the table, having an open discussion, analysing the different interests and corresponding rights at stake, agreeing on a way forward and then monitoring progress on the agreed plan. Decisions must take all opinions into account, according due protection to minority concerns rather than simply adopting the majority view.

F. Ensuring inclusion

41. Participatory processes will not automatically include everyone. Assuming that they do would not only be naïve, but also carry the risk of entrenching inequalities. Men, majority ethnic groups, wealthier and more educated households, and people with higher social status tend to participate to a disproportionate degree. For instance, the Special Rapporteur raised concerns about the lack of opportunities for indigenous peoples in Canada to participate in decision-making on funding for water and sanitation.[23] Communities cannot be considered a coherent and integrated whole; rather, inherent hierarchies and entrenched patterns of inequalities must be acknowledged.

42. Inclusion must be deliberate. The first step is to identify those who are marginalized and the barriers they face. This requires deliberate efforts because a history of marginalization will often have resulted in making such groups invisible to policy makers. Processes to identify everyone concerned can be more successful by working together with a wide range of local NGOs and the national human rights institution as well as others who are in a position to identify the most marginalized, including people who tend not to join groups or associations.

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[21] Constitutional Court of South Africa, *Occupiers of 51 Olivia Road v. City of Johannesburg*, CCT 24/07, para. 19.

[22] www.mdgfund.org/program/securingaccesswaterthroughinstitutionaldevelopmentandinfrastructure.

[23] See https://spdb.ohchr.org/hrdb/24th/public_-_OL_Canada_14.05.13_(3.2013).pdf.

43. Efforts must enable effective participation. For example, a mode of engagement that relies on writing would marginalize the illiterate. Where approaches such as questionnaires are used, it is essential to recognize the risks of elite capture and counter it with other opportunities such as simple versions of a questionnaire and oral discussions. Even when they are able to take part in meetings, marginalized groups often exercise self-censorship, being intimidated either by the presence of others with "higher" status or formal procedures. One approach to avoid this is starting the process with more homogenous groups for discussing particular issues, e.g., groups of women or of young people, and then bring their input into the larger process. At the international level, the United Nations Environment Programme engages with "major groups" rather than civil society as a whole, including children and youth, farmers, indigenous peoples, women, and workers and trade unions.[24]

44. Another approach is having an explicit discussion on the rules for deliberation, accompanied by a conscious attempt to draw out the voices of marginalized individuals. Otherwise, the process can easily default to existing patterns and hierarchies, with their attendant unacknowledged communication protocols. Two different approaches demonstrate this. Villagers serving on health watch committees in Bangladesh were inducted through a series of workshops, at which they agreed on the rules of deliberation (when and how to speak, addressing every member with respect, etc.). The minutes of meetings of the health watch committees show evidence of genuine balanced deliberations, whereas a similar initiative, where no rules on deliberation were agreed, was dominated by the voices of medical professionals and members with higher social status.[25]

45. An assessment of barriers must address all types of obstacles: physical, economic, institutional, attitudinal and social. Physical barriers affect persons with disabilities, but they also relate to decisions on meeting times and childcare. Social barriers include prejudices and stereotypes. Gender norms and stereotypes play a significant role in determining what degree of control men and women exercise. In many instances, social norms legitimize women's exclusion from decision-making. Social norms explain, for instance, why authorities fail to take seriously reports of women being subjected to indignities and risks of sexual violence when accessing sanitation facilities outside their home.[26] As the Special Rapporteur has noted elsewhere, taboos around menstruation, combined with inadequate access to water and sanitation, explain why a significant number of girls consistently lose a week of schooling each month (A/HRC/21/42, para. 22). Without a deliberate effort to draw out their own analysis and ideas, solutions will often fail to address women's and girls' needs.

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[24] www.unep.org/civil-society.

[25] Simeen Mahmoud, "Spaces for participation in health systems in rural Bangladesh: the experience of stakeholder community groups", in *Spaces for Change? The Politics of Citizen Participation in New Democratic Arenas*, Andrea Cornwall and Vera Schattan Coelho, eds. (London, Zed, 2007), p. 65.

[26] See Shirley Lennon, Fear and Anger: Perceptions of risks related to sexual violence against women linked to water and sanitation in Delhi, India (Sanitation and Hygiene Applied Research for Equity (SHARE), 2011), p. 3; Global Justice Clinic/Center for Human Rights and Global Justice, *Yon Je Louvri: Reducing Vulnerability to Sexual Violence in Haiti's IDP Camps* (New York, New York University School of Law, 2012), pp. 54-55.

46. With regard to water management, principle No. 3 of the Dublin Statement on Water and Sustainable Development, adopted by the International Conference on Water and the Environment in 1992, acknowledges that "[w]omen play a central part in the provision, management and safeguarding of water.... [I]mplementation of this principle requires positive policies ... to equip and empower women to participate at all levels in water resources programmes, including decision-making and implementation".[27] While women's participation is essential, care must be taken to avoid reinforcing existing stereotypes about women and girls being solely responsible for water management, which in many instances implies water collection.

47. Children are among those most often excluded from participatory processes, and it must not be assumed that adults will automatically represent their views. It is essential to create the space and allow sufficient time for child-led processes, including to identify issues that are of concern to them, as well as collaborative environments for adults and children.

48. Deliberate inclusion is even more crucial in circumstances where marginalization is based on stigma, which "legitimizes" exclusion by making it socially "justifiable" (ibid., para. 78). Where necessary and appropriate, participatory processes should include a "safe space" where social norms can be openly discussed and brought to the surface. Concerned individuals and groups can deliberate on what action to take and whom to involve among public and private institutions. For individuals and groups who have been marginalized, it is particularly important to have assurances that their participation counts and that voice will translate into influence.

G. Balancing direct participation and representation of groups

49. Direct participation poses challenges in terms of processing and responding to the variety of inputs. Channelling participation through representatives other than democratically elected officials is seen as a solution to making participation manageable, but it poses difficult questions and runs the risk of creating and reinforcing exclusions. People hold rights as individuals and have varied and often conflicting views and interests, which makes it difficult for anyone to represent anyone else. The Convention on the Rights of Persons with Disabilities, for instance, stresses that persons with disabilities must be enabled to participate, not only organizations working on their behalf (arts. 29, 33 (3)). However, there is a need to facilitate participatory processes and come to decisions that reflect everyone's interest to the largest extent possible.

50. Stakeholder participation has been used extensively in an attempt to address such challenges. Organized groups viewed as representing the interests of concerned people are invited. People do not engage with policymakers directly, but through collective entities "representing" them: NGOs, neighbourhood associations or community-based groups. In some instances, stakeholder participation has been limited to a few well-established NGOs, raising doubts about whether their involvement amounts to genuinely inclusive participation. Moreover, "stakeholders"

[27] www.wmo.int/pages/prog/hwrp/documents/english/icwedece.html.

do not necessarily represent individuals and their interests, but can also include companies, donors and other actors, rather than rights holders as such.

51. Stakeholder participation can enhance or detract from meaningful participation depending on a range of factors, including:

(a) Accurate, sensitive and transparent identification, so that the invited groups are in fact representative of those most concerned. When selection is appropriate, stakeholder participation has an advantage over an "unaffiliated" approach. It can be employed to ensure targeted participation by all concerned, including marginalized groups whose interests are likely to be overlooked in the pursuit of the common interest;

(b) The degree to which the collective entity is indeed representative of the interests of those it claims to represent;

(c) Stakeholder participation must be supplemented by a deliberate effort to identify concerned people who may not be reached through this method and to devise a way to fill the gap. Examples include extremely poor people, who are not likely to join associations, or stigmatized persons.

52. Another approach to balancing direct participation with group representation would be to elect representatives inside the process only once it has started rather than before. Other approaches that have been used include random selection, which has the advantage of avoiding biases in selection and getting different perspectives.[28]

53. The Royal Commission on the Future of Health Care in Canada (Romanow Commission), set up by the Government of Canada in 2001, used the citizens dialogue methodology. Deliberative forums brought together statistically representative groups of "unaffiliated citizens", with instructions to "speak for themselves, not as representatives of special interests".[29] The initiative was acclaimed as an exercise in extensive public consultation; however, it has been criticized for having inadequately addressed aboriginal health care. Although some participants were aboriginal, the structure of the process made no deliberate effort to overcome dynamics of marginalization and encourage their participation.[30]

54. The examples show that regardless of the approaches used, the greatest challenges consistently relate to ensuring inclusion. There is always the danger of elite capture, of only listening to the established and more powerful voices. Therefore, what is most crucial are deliberate efforts to guarantee inclusion.

V. Participation at all levels of decision-making

[28] Yves Sintomer, Carsten Herzberg and Anja Röcke, "From Porto Alegre to Europe: potential and limitations of participatory budgeting", *International Journal of Urban and Regional Research*, vol. 32, No. 1 (2008), p. 173.

[29] Judith Maxwell, Karen Jackson and Barbara Legowski, *Report on Citizens' Dialogue on the Future of Health Care in Canada*, Commission on the Future of Health Care in Canada, 2002, p. 94. Available from http://www.cprn.org/documents/12704_en.PDF.

[30] See Bettina von Lieres and David Kahane, "Inclusion and representation in democratic deliberations: lessons from Canada's Romanow Commission", in Cornwall and Coelho, p. 133.

55. The focus of participation has often been on decision-making at the local and even the project level. For instance, principle No. 2 of the Dublin Statement stresses that a participatory approach "means that decisions are taken at the lowest appropriate level, with full public consultation and involvement of users in the planning and implementation of water projects".

56. Many decisions can be taken at the local level; this has the advantage of being close to the people concerned. However, participation must not be limited to local decisions. People must have the opportunity to participate wherever decisions are taken. In some instances, people have invested time and energy in processes at the local level, but the decisions taken are not acted upon and cannot be implemented as local bodies lack the power to do so, in particular where institutional decentralization is not matched by fiscal devolution. Broader power structures often constrain the scope of decision-making at the local level. In such instances, not only are people's expectations frustrated, but participation cannot be considered meaningful.

57. Many far-reaching decisions shaping the overall direction of policies and priorities are taken at the national level. In other words, people must not only have the opportunity to decide on the location of a borehole or latrine, but also on the priorities set by the Government, the distribution and redistribution of resources and the strategic decisions on legislative and policy frameworks. Decisions are also taken at the international level, and some international processes have far-reaching implications and may influence priorities at the national level for years and decades. For instance, in the process of discussing the post-2015 sustainable development agenda, international organizations sought to create spaces for voicing ideas, proposals and concerns.[31] However, the questions remain whether these voices translate into influence on actual decision-making on future development goals at the political level and whether such participation can be considered meaningful.

A. Planning and formulation of policy and legal frameworks

58. Participation must be ensured in the formulation of legislation and policies. For instance, in Uruguay, the inclusion of the right to water and sanitation in the Constitution (art. 47) was achieved through a referendum. At the same time, legislation and policies are useful instruments for recognizing the right to participate and spelling out the requirements for participation. Many countries include in their constitutions the right to participation or enshrine participation as a principle. For instance, the Constitution of Uganda guarantees the right to participate "in the affairs of government" (art. 38 (1)). In the European Union, the acknowledgement of citizen initiatives in the Treaty of Lisbon furthers the growing significance of participation.[32]

59. The legal and policy frameworks need to be as detailed as possible in setting out the institutions and procedures that will enable participation. Unless this is done, the right to participation can remain intangible. For instance, although South Africa's National Water Act contains robust provisions on public engagement in

[31] See, for example, www.worldwewant2015.org.

[32] Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union, document 6655/08, 2008, arts. 10 and 11.

integrated water resource management, it was only after detailed guidelines were issued regarding the development of catchment management strategies that officials began to seek participation.[33]

60. Participation at the national level inevitably presents challenges of scale. Care must be taken to ensure the representativeness of the entities involved, and measures must be taken to focus on the participation of groups and individuals whose interests tend to be overlooked. The Constitutional Court of South Africa developed the concept of "meaningful engagement" in the *Olivia Road*[34] case, holding that people have a right to participate in decisions affecting the enjoyment of social rights, including in developing plans of action. While courts cannot implement participatory processes, they may act as an important trigger in institutionalizing structures for engagement.[35]

61. In Brazil, the Government undertook a broad-based participatory process in developing its national water and sanitation plan. It included workshops and consultations, with additional participation through the national policy councils responsible for cities, water resources and environment as well as through the Internet. Some components of the process involved technical discussions, whereas other components used simplified language (see A/HRC/27/55/Add.1).

B. Financing and budgeting

62. Participation in decisions on financing and budgeting is extremely important. If people are not involved in decisions on the allocation of resources, then legislation and policies, however well designed, may not translate into prioritization. However, public participation, or even information, in the area of finance is the exception rather than the rule.

63. Participation involves determining which and how strategies and programmes are funded, how the Government can raise revenue, how existing funding can be restructured and what alternative solutions should be sought. For example, in Milton Keynes, in the United Kingdom of Great Britain and Northern Ireland, a referendum was held resulting in an agreement to higher council taxes for improved service provision.[36] Service providers should also engage residents in designing the mode of payment. The residents of Kayole-Soweto, Kenya, negotiated a social connection policy with Nairobi Water, enabling them to spread out their payment of the connection fee over two years.[37]

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[33] Derick du Toit and Sharon Pollard, "Updating public participation in IWRM [Integrated Water Resource Management]: a proposal for a focused and structured engagement with catchment management strategies", *Water SA*, vol. 34, No. 6 (2008).

[34] *Occupiers of 51 Olivia Road v. City of Johannesburg*, CCT 24/07, para. 35.

[35] Brian Ray, "Proceduralisation's triumph and engagement's promise in socio-economic rights litigation", *South African Journal on Human Rights*, vol. 27, No. 1 (2011), p. 107.

[36] Lawrence Pratchett, ed., "Introduction: defining democracy renewal", in *Renewing Local Democracy? The Modernisation Agenda in British Local Government* (Taylor and Francis, 2000), p. 10.

[37] Celestine N. Musembi, "Watered down: gender and the human right to water and sanitation in Mathare, Nairobi", in *Water is Life: Women's Human Rights in National and Local Water Governance in Southern and Eastern Africa*, Anne Hellum and Patricia Kameri-Mbote, eds. (forthcoming, 2014).

64. The most robust example of participation in budgeting is participatory budgeting, a process that gives individuals the right to actually allocate resources.[38] One of the best-known examples is Porto Alegre, Brazil.[39] Delegates elected from the various areas of the city form a participatory budgeting council that formulates and approves the city's budget. The input is informed by forums held in the various areas. The council has the power to call the city officials to account for the previous year's expenditure, and planned expenditure is only approved if the council is satisfied with the accounts.

65. Even where participatory budgeting has not been adopted, some principles must be applied to enable the public to play a role in decisions on raising revenue and allocating resources. Information on the budget and financing processes must be made accessible. There must be public deliberation on any trade-offs between the different options from which the Government must choose; what residents identify as priorities is sometimes dissociated from the action that service providers and/or Governments take. During her visit to Brazil, the Special Rapporteur encountered an example. Residents of the Complexo do Alemão in Rio de Janeiro identified water and sanitation as their priority. However, the Government prioritized the construction of a cable car in the settlement (A/HRC/27/55/Add.1, para. 95). Meaningful participation would demand that residents' views be given due weight and that their priorities not be dismissed.

66. An essential part of the budget cycle is determining whether allocations are spent as planned. Civil society can play a role in facilitating people's engagement in budget monitoring. WaterAid Nepal, for instance, has developed materials for assisting communities to monitor the Government's budgetary allocations to the water and sanitation sector.[40] Another tool used to monitor government expenditure is the public expenditure tracking survey, a process through which residents can follow the flow of public funds. For instance, in the United Republic of Tanzania, communities use such tracking to monitor government spending of funds allocated for water and sanitation. They request explanations from the relevant authorities, which result in greater responsiveness and accountability. The methodology has received the support of the Government, which has promulgated a series of national guidelines for the process.[41]

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[38] Yves Sintomer, Carsten Herzberg and Giovanni Allegretti, Participatory Budgeting Worldwide: Updated Version Dialog Global, No. 25, 10 (Bonn, Service Agency Communities in One World, 2013).

[39] Zander Navarro, "Participatory budgeting in Porto Alegre, Brazil", in *Citizens in Charge: Managing Local Budgets in East Asia and Latin America*, Isabel Licha, ed. (Washington, D.C., Inter-American Development Bank, 2004), pp. 247-291.

[40] Catarina de Albuquerque and Virginia Roaf, *On the Right Track: Good Practices in Realizing the Rights to Water and Sanitation* (Lisbon, 2012), p. 187.

[41] Ibid., pp. 187-188.

C. Service provision

67. Participation in the context of service provision relates to a range of decisions, including on the type, location and improvement of services and whether and how to involve the private sector. Lessons can also be drawn from community-led total sanitation.[42] Finally, emergencies require special attention.

1. Decisions on type and improvement of services

68. The people concerned must be involved in decisions on what kind of service to provide. They may be decisions on whether to supply water through standpipes or water kiosks, where to situate latrines and how to maintain them. Inclusiveness in this process is crucial so that services are designed to respond to the interests and requirements of marginalized individuals as well as "the average person". The design of service provision must be based on a sound understanding of the local context. Solutions should build on existing norms and practices to the extent that these are consistent with human rights. However, local rules and customs must not be idealized, but carefully scrutinized for their adherence to human rights standards, in particular non-discrimination and equality, to ensure that existing patterns of marginalization are not reinforced.

69. In the *Beja* case, a South African court dealt with an agreement between the local government and the community regarding decisions on the design of toilets. The court held that such agreements must satisfy certain minimum requirements, including consultation with authorized representatives following the sharing of information and technical support, where necessary.[43] The court found that these requirements had not been met. It also voiced concern that "a majority within a community [cannot] approve arrangements in terms of which the fundamental rights of a vulnerable minority within that community will be violated".[44] It found a denial of effective community participation in decision-making.[45]

70. Initiatives taken by residents can also have a significant impact on the improvement of services and sanitary conditions. For instance, Rialto Rights in Action has been campaigning in Dublin for improvement of the conditions in Dolphin House, a large public housing complex. The campaign seeks to empower people to claim their right to housing. Residents gathered evidence of wastewater invasion through toilets and baths and mould. They developed indicators based on human rights that are monitored regularly, including sewage invasion and dampness; records were kept of responses received from the Dublin City Council and on instances of inclusion of residents in decision-making. Residents successfully engaged with the media and, following public pressure, by 2013 the city had refurbished 40 of the worst-affected housing units. While progress has not been as quick as initially agreed, a regeneration plan is in progress.[46]

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[42] www.communityledtotalsanitation.org.

[43] Western Cape High Court of South Africa, Cape Town, *Beja and others v. Premier of the Western Cape* (21332/10), judgement of 29 April 2011, para. 98.

[44] Ibid., para. 99.

[45] ibid., para. 146.

[46] Rory Hearne and Padraic Kenna, "Using the human rights based approach to tackle housing deprivation in an Irish urban housing estate", *Journal of Human Rights Practice*, vol. 6, No. 1 (March 2014), pp. 1-25.

2. Private sector participation

71. The public must participate in decisions on whether to delegate service provision to private entities. In many countries, the decision to involve the private sector as part of reforms required by international financial institutions or in the context of austerity measures was not publicly debated. Even in times of economic crisis, the Government must ensure the broadest possible participation. International financial institutions should not make private sector participation a conditionality, thereby pre-empting public involvement in decision-making. In a communication with the Government of Portugal, the Special Rapporteur raised concerns about the lack of meaningful participation and of information on contractual agreements in processes to promote private sector participation (A/HRC/25/74, p. 27).

72. Transparency and participation must be safeguarded in tendering, bidding, negotiating contracts, deciding on the rate model and on the extension of services. The terms of reference and the draft contract should be made available for public scrutiny and comment. The State can protect the right to participation through contractual arrangements with non-State service providers and through its regulatory role.

73. In Berlin, a coalition of concerned individuals and civil society groups initiated a referendum that succeeded in making the contracts relating to a public-private partnership for provision of water services in 1999 available for public scrutiny, though only years after the city entered into the contract.[47]

3. Disconnection of services

74. The Committee on Economic, Social and Cultural Rights, in its general comment No. 15 (2002) on the right to water, states that before any services are disconnected, certain conditions must be met, inter alia: (a) genuine consultation with those affected (including ascertaining ability to pay); (b) timely and full disclosure of information; and (c) reasonable notice (para. 56).

75. Some countries' water laws reflect such requirements. The South African Water Services Act requires that disconnections must be preceded by notice and the persons concerned provided with the reasons for the action, and informed of their right of appeal (sects. 11 (4) and 4 (3)). The courts have reversed some disconnections because the process had not been fair.[48]

4. Community-led total sanitation

76. A positive lesson in people's agency can be learned from community-led total sanitation, which relies on a community's capacity for collective action to end open defecation. The approach challenges the dominance of "expert" solutions and subsidies, focusing instead on reflection and behaviour change through mobilization. It looks beyond the individual to create open defecation-free communities. Facilitators engage the community in analysing the implications of open defecation on health, dignity and women's security. The process usually

[47] De Albuquerque and Roaf, p. 163.

[48] For example, High Court of South Africa, *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, case No. 01/12312, 2002.

succeeds in making clear that unless the entire community uses latrines, everyone is affected.[49]

5. Emergencies

77. Responding to emergencies poses particular challenges for participation. There is often a concern that States and humanitarian actors need to be able to act quickly and that participatory processes would slow down responses. However, many decisions on disaster response are taken beforehand, and participation is essential at the planning stage. Moreover, in many instances emergency responses develop into more long-term programmes. In relation to menstrual hygiene management during an emergency, for instance, a solution might be to include a standard response for distributing sanitary kits to make sure that immediate needs are met on the basis of cultural preferences as far as they are known, or assumed. This response should be monitored subsequently to assess whether it meets women's and girls' needs, and then adjusted accordingly.[50] The need for a rapid response should not be used as an excuse to pre-empt participation. What is needed instead, in particular given the wide range of actors involved in this context, is a broader discussion on how participation can be ensured in cases of emergencies and provision of humanitarian assistance through participatory planning in advance, as well as in monitoring and adjusting emergency responses. The standards contained in The Sphere Handbook recognize that participation by people affected by disaster is integral to humanitarian response.[51]

D. Projects that may threaten the realization of human rights

78. Meaningful participation must be ensured in any situation where people's access to water or sanitation is (potentially) affected by a project. Mining, for instance, can have serious consequences on both water quantity and quality that can extend across generations (see, for example, A/HRC/24/41, para. 15). Such situations are often marked by an atmosphere of mistrust and power imbalances. Environmental and social impact assessments are needed not only to assess the impact of a project, including on human rights, but are also invaluable for the community to gain clarity. Ideally, impact assessments should be undertaken collaboratively with the community. At a minimum, there must be full disclosure of the findings.

79. A case in India concerning the renewal of a mining lease affirmed the right to participation.[52] The court held that, even though the required information was not made available in time for the public hearing, the relevant authority was required to provide the reasons for the decision to renew the lease. It emphasized that the purpose of the legal requirements was to make public hearings meaningful,

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[49] Kamal Kar and Robert Chambers, *Handbook on Community-Led Total Sanitation* (Plan UK and Institute of Development, 2008), p. 9.

[50] Marni Sommer, "Menstrual hygiene management in humanitarian emergencies: gaps and recommendations", *Waterlines*, vol. 31, Nos. 1 and 2 (January 2012), pp. 83 and 96.

[51] The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (The Sphere Handbook), 2011, p. 53.

[52] High Court of Delhi at New Delhi, Writ petition (civil) No. 9340/2009 and CM APPL. Nos. 7127/09, 12496/2009, judgement of 26 November 2009.

including full information on the advantages and disadvantages of the project and its likely impact.

E. Monitoring, evaluation and accountability

80. People must be involved in monitoring and evaluation and, ideally, in designing the relevant framework. Where States, donors, NGOs or other external actors undertake monitoring and evaluation without involving the people concerned, the findings — too often treated as confidential — should be made available.

81. Participatory approaches to monitoring and evaluation are gaining ground. Participatory monitoring and evaluation differs from conventional approaches in that local people take charge of the process.[53] The participants themselves design the methodology, define the indicators, collect and analyse the data and decide how it should inform action.

82. One approach to participation in this area is participatory geographic information systems, which rely on maps. They merge technical spatial information with a local community's location-specific knowledge, often producing rich data including on land use, water sources, differentiated access to resources and sites of actual or potential environmental hazards.[54] For instance, OpenStreetMap[55] initiatives in informal settlements in Nairobi have generated detailed data,[56] indicating how many households share a toilet, whether there are gender-specific toilets, whether the toilets have disability access and whether the toilets provide sanitary bins for women. Such data provide a powerful tool for monitoring trends and patterns of neglect or underinvestment. They can also provide a baseline, which becomes useful in monitoring the environmental impact of extractive industries, for instance, leading to demands for remedial action. Communities have also used self-enumeration, popularized by Shack/Slum Dwellers International, to collect data.[57] It has been an effective tool for countering the view that it is impossible to plan for service provision in informal settlements because of a lack of reliable data.

83. More broadly, social accountability mechanisms refer to mechanisms through which residents or civil society hold State officials or service providers to account. Social accountability has the power to increase the pressure on officials to explain and justify their decisions; fear of damage to one's reputation can sometimes be a stronger deterrent or incentive than legal proceedings. The Equitable Access Score-Card[58] developed by ECE and the World Health Organization (WHO) offers a tool

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[53] Marisol Estrella and John Gaventa, *Who Counts Reality? Participatory Monitoring and Evaluation: A Literature Review*, Institute of Development Studies (IDS) Working Paper No. 70, 1998, p. 16.

[54] Giacomo Rambaldi, "Participatory 3-dimensional modelling for policy change and planning: the practice and the potential", in *Who Counts? The Power of Participatory Statistics*, Jeremy Holland, ed. (Practical Action, 2013), pp. 1-224.

[55] www.openstreetmap.org.

[56] See the Map-Mathare and Map-Kibera initiatives, available from www.jambonewspot.com/in-kenya-using-tech-to-put-an-invisible-mathare-slum-on-the-map; http://matharesiokenya.wordpress.com/category/map-mathare-2/; http://mapkibera.org/work/locations. See also www.majidata.go.ke.

[57] See www.sdinet.org/method-community-planning.

[58] UNECE and WHO/Europe, The Equitable Access Score-Card: supporting policy processes to achieve the human right to water and sanitation (ECE/MP.WH/8), 2013, p. 9.

that can help Governments and other stakeholders establish a baseline, discuss actions to be taken and evaluate progress through self-assessment. This process, as shown by the experiences of France, Portugal and Ukraine, can enable an objective debate and generate input for policy processes.

84. Some initiatives involve partnerships between communities, service providers and the Government. Examples include service charters developed jointly between water user associations and service providers.[59] These charters spell out the obligations of each party and become the basis for monitoring the quality of services: whether water supply is regular, whether water charges remain affordable, whether sanitation service providers are maintaining the agreed level of cleanliness,[60] and whether service has gradually been expanded to underserved areas.

85. For social accountability mechanisms to work, people must be able to access the relevant information, whether from Government or service providers. The linkage with formal accountability mechanisms such as regulators, ombudspersons and judicial review strengthens social accountability. For instance, the national human rights commissions in Colombia, Ecuador and Peru play an active role in monitoring the relevant government bodies and service providers to ensure that water and sanitation services are delivered in a non-discriminatory manner.[61] This role could be made more participatory by linking it up with social accountability initiatives.

86. In addition to participation in accountability, there must also be accountability for ensuring participation. Courts and other mechanisms play an important role in ensuring accountability in cases of failure to ensure active, free and meaningful participation, i.e., when the right to participation itself has been violated. As evidenced by the case law referenced in the present report, courts play an important role in demanding compliance with States' obligations to ensure participation.

VI. Conclusion and recommendations

87. **Participation is a human right and States have corresponding obligations to ensure participation. Participation is essential for democracy and people's autonomy, agency and dignity. Yet, the human right to participation has not yet received the necessary attention and implementation has lagged. While there are excellent practices that ensure participation, these appear to be isolated rather than institutionalized. Participation is not a one-off exercise, but a continuous process that must be embedded in the political culture.**

88. **In many instances only token attention has been paid to participation. All too often, only the well off and powerful, as determined by gender, ethnicity, income and other factors, "participate" in decision-making, to the exclusion of**

[59] See, for example, Water and Sanitation for the Urban Poor (WSUP), "Getting communities engaged in water and sanitation projects: participatory design and consumer feedback", WSUP Topic Brief No. 007, February 2013.

[60] See, for example, Neil Overy, The Social Justice Coalition and Access to Basic Sanitation in Informal Settlements in Cape Town, South Africa, International Budget Partnership, Study No. 11, 2013.

[61] De Albuquerque and Roaf, p. 182.

marginalized members of society. The greatest challenge may lie in ensuring participation on the basis of equality. When participatory processes do not unveil and address entrenched power structures and marginalization, they carry the risk of being manipulative and of reinforcing and "legitimizing" inequalities. Equality and non-discrimination demand structural transformation to remove barriers to meaningful participation for all. They also require deliberation and redistributive action to remedy past patterns of resource allocation that have reinforced marginalization.

89. The human rights framework stresses that participation is not just "useful" or a "good idea"; it gives rise to obligations that States have to comply with. The human rights principle of accountability is indispensable in ensuring that decision makers actually take the action necessary to translate voice into influence. As such, participation is an antidote to corruption, exposing maladministration and vested interests. Public officials are answerable and accountable to the public, including on how public input is taken into account in decision-making. There are consequences for failure to fulfil obligations that can ultimately be enforced in court.

90. In line with the above, the Special Rapporteur offers the following conclusions and recommendations.

91. States must take the following measures:

(a) States must take measures to institutionalize participation, including by:

(i) Considering recognizing the right to participation in national constitutions;

(ii) Spelling out the instruments, processes, responsible institutions and other details of participatory processes in legislation and policies;

(iii) Incorporating the costs of participatory processes in the initial design of any measures;

(iv) Equipping institutions to facilitate participatory processes and training officials in the interpersonal skills needed for participatory engagement;

(v) Balancing technical expertise with knowledge gained through experience, encouraging technical experts to act as facilitators and to enable people to make informed choices;

(b) States must take concrete and deliberate measures to ensure that participatory processes are inclusive and do not inadvertently further entrench inequalities, including by:

(i) Identifying groups that are typically marginalized;

(ii) Using a wide variety of methods and channels to reach different groups;

(iii) Eliminating institutional, physical, economic, attitudinal, social or other barriers that specific groups may face;

(iv) Addressing gender stereotypes;

(v) **Creating safe spaces for deliberation, where appropriate;**

(c) **To ensure active, free and meaningful participation, States must ensure that the following elements are in place:**

(i) **Involving people in setting out the terms of the engagement;**

(ii) **Creating space for participation;**

(iii) **Enabling people to access participatory processes;**

(iv) **Guaranteeing free and safe participation;**

(v) **Ensuring access to information;**

(vi) **Providing reasonable opportunities to influence decision-making and feedback on what proposals have been taken into account and what proposals have been rejected, and why;**

(d) **States must ensure participation at all levels of decision-making, including strategic decisions on the overall direction of legislation and policies, priorities in the use of resources and questions of distribution and redistribution. This includes:**

(i) **Planning and formulation of policy and legal frameworks;**

(ii) **Financing and budgeting;**

(iii) **Service provision, including decisions on the type, location and improvement of services, whether and how to involve the private sector, and decisions on disconnections and on services in emergency situations. The Special Rapporteur particularly encourages a broader discussion among all relevant actors on participation in the context of emergencies;**

(iv) **Projects that may threaten the realization of human rights and impact assessments carried out in that context;**

(v) **Monitoring, evaluation and accountability;**

(e) **States must ensure access to justice where the human right to participation has been violated.**

92. **Further, States and other stakeholders should take the following measures:**

(a) **States should ratify international and regional instruments that guarantee the human right to participation, as well as the respective complaint mechanisms. In processes before international mechanisms, States should encourage civil society participation to make these processes meaningful;**

(b) **United Nations treaty bodies, the special procedures of the Human Rights Council, other international mechanisms and regional mechanisms should pay increasing attention to the right to participation. The Special Rapporteur sees a need for standard-setting on the right to participation, e.g., through the elaboration of general comments on the right to participation in the context of civil, cultural, economic, political and social rights. She also encourages the Human Rights Council to address participation;**

(c) **Civil society organizations, national human rights institutions, community-based organizations and others should contribute to promoting active, free and meaningful participation of all people concerned and support people to participate in decision-making processes;**

(d) **International organizations and multilateral and bilateral donors should support participatory processes at the national level. They should not impose conditionalities that circumvent participatory processes at the national level. Where appropriate, they should consider adjustments to programming and project structures, recognizing that participatory processes and achieving long-term sustainable results require time.**